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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,638	01/26/2004	Russell A. Budd	YOR920000326US2	9109

7590 01/05/2009  
Ryan, Mason & Lewis, LLP  
90 Forest Avenue  
Locust Valley, NY 11560

EXAMINER
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BECK, ALEXANDER S

ART UNIT	PAPER NUMBER
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2629

MAIL DATE	DELIVERY MODE
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01/05/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/764,638</p>	<p><b>Applicant(s)</b> BUDD ET AL.</p>	
	<p><b>Examiner</b> ALEXANDER S. BECK</p>	<p><b>Art Unit</b> 2629</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Sumati Lefkowitz/  
Supervisory Patent Examiner, Art Unit 2629

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that the protective shade taught by Fan is functionally similar to a conventional camera lens cap, in that the protective shade is operative to protect the lens and other internal components from damage when the device is not in use, but must remain open when the device is in use (Amendment, pp. 2-3). Although Figure 54 of Fan suggests that the protective shade must remain open when the device is in use, examiner respectfully submits that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the compact head mounted virtual image display unit of Robertson such that a slidable opaque light shield was provided, as taught by Fan, but at the back-end of the optical system (i.e., the end farthest from the user's eye). As one of ordinary skill in the art would appreciate, the suggestion/motivation for doing so would have been to protect the back-end of the transmissive optical display system of Robertson since the back-end of the optical system in Robertson is suspect to mechanical damage when exposed, which is the problem solved in Fan (Fan, col. 23, ll. 33-36).

Applicant argues that the position of the shutter taught by Robertson has no effect on the amount of background light entering the display pod (Amendment, p. 3). However, examiner respectfully submits that the shutter taught by Robertson was not relied upon in the Office action to read on the claimed light shield.

Applicant argues that Fan teaches embodiments which expressly exclude the modifications stated by the examiner (Amendment, pp. 3-4). Examiner respectfully disagrees, and notes that Fan is relied upon for the disclosure of a slidable opaque light shield that serves to protect an optical system suspect to mechanical damage when exposed (Fan, col. 23, ll. 44-46). Examiner fails to see any disclosure in Fan cited by the applicant that would suggest that Fan teaches away from placing the slidable opaque light shield at the back-end of an optical system as taught by Robertson. The disclosure of Fan cited by the applicant discusses various materials that may be used for the optical housing to control background light transmission, but there is no discussion as to why Fan would teach away from providing a slidable light shield at the back-end of an optical system as taught by Robertson.